

### **304.33-040 Jurisdiction and venue.**

- (1) Actions by executive director. Except as provided in subsection (2) of this section, and subsection (1) of KRS 304.33-230, no delinquency proceeding shall be commenced under this subtitle by anyone other than the executive director and no court shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other person.
- (2) Action by judgment creditors:
  - (a) The judgment creditors of three (3) or more unrelated judgments may commence proceedings under the conditions and in the manner prescribed in this subsection, by serving notice upon the executive director and the insurer of intention to file a petition for liquidation under KRS 304.33-190 or 304.33-520. Each of the judgments must:
    1. Have been rendered against the insurer by a court in this state having jurisdiction over the subject matter and the insurer;
    2. Have been entered more than sixty (60) days before the service of notice;
    3. Not have been paid in full;
    4. Not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and
    5. Not be a judgment on which an appeal or review is pending.
  - (b) If any one (1) of the judgments in favor of a petitioning creditor remains unpaid for thirty (30) days after service of the notice, and the executive director has not then filed a petition for liquidation, the creditor may file in the name of the executive director a verified petition for liquidation of the insurer under KRS 304.33-190 or 304.33-520 alleging the conditions stated in this subsection. The executive director shall be served and joined in the action.
- (3) Exclusiveness of proceedings.
  - (a) The court shall have exclusive jurisdiction to entertain, hear, or determine all matters in any way relating to any delinquency proceeding under this subtitle, including, but not limited to, all disputes involving purported assets of the insurer.
  - (b) Notwithstanding the provisions of paragraph (a) of this subsection, the court may authorize the receiver to seek injunctive or other appropriate relief from other courts, either within or without this state, if, in the opinion of the court, this action will be an aid to any delinquency proceeding.
  - (c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this subtitle. No provisions in this subtitle shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process.

- (4) Change of venue. Venue for proceedings arising under this subtitle shall be laid initially as specified in the sections providing for such proceedings. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by KRS Chapter 452 or other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other Circuit Court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subsection relates only to venue and is not jurisdictional.
- (5) Personal jurisdiction, grounds for. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter shall have jurisdiction over a person served in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:
- (a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;
  - (b) If the person served is a reinsurer who has at any time issued a contract of reinsurance to an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;
  - (c) If the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer;
  - (d) If the person served is or was at the time of the institution of the delinquency proceedings holding assets in which the receiver claims an interest on behalf of the insurer;
  - (e) If the person served has filed a claim against the insurer under the provisions of KRS 304.33-360;
  - (f) If the person served is otherwise amenable to the exercise of personal jurisdiction by the courts of this state under the provisions of the due process clause of the Fourteenth Amendment to the United States Constitution; or
  - (g) If the person served is obligated to the insurer in any way in any action on or incident to the obligation.
- (6) Service of process.
- (a) If personal jurisdiction is authorized by this section, service of process may be made on the person, or any agent of the person, in the county of this state where he may be found, or on the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of the person.

- (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons by sending by certified mail a true copy to the Secretary of State and shall also mail with the summons an attested copy of the complaint. The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail the copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and, in addition, the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served upon the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.
- (c) The clerk mailing the summons to the Secretary of State shall mail to him, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action.
- (7) Forum non conveniens. If the court on motion of any party finds that any action commenced under subsection (5) of this section should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay further proceedings on the action in this state.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 422, sec. 4, effective July 13, 1990. -- Created 1970 Ky. Acts ch. 301, subtit. 33, sec. 4, effective June 18, 1970.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.